IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12821 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPN

Versus

ST MAZDOOR SANGH

Appearance:

MR NAGESH C SOOD for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

MS SONA SAGAR for Respondent No. 2

MS SHALINI S MAIR for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/09/2001

ORAL JUDGEMENT

1. Rule. With the consent of the parties, the matter is finally heard today.

2. The respondent-workman was working as a Driver in the S.T. Corporation. He raised an Industrial Dispute, which was numbered as (IT) No.17 of 1995, as he was subjected to punishment by the S.T. Corporation of withholding annual increment for a period of three years

with future effect and, therefore, the said dispute was raised. The concerned workman was serving as a driver at Mahuva Depot of the Corporation. He was charge-sheeted on the ground that while driving the bus on the relevant day, i.e. on 10.10.1990, he had collected Rs.48/from three passengers, but he had not issued tickets to them and, accordingly, departmental enquiry was initiated against him. After the conclusion of the enquiry, the Disciplinary Authority came to the conclusion that the charges are proved and his annual increment was withheld by the S.T. Corporation for a period of three years with future effect. The aforesaid dispute was raised by the workman challenging the aforesaid punishment.

3. The Labour Court, after hearing both the sides, came to the conclusion that the validity of the enquiry proceeding is not challenged by the workman. However, the Labour Court came to the conclusion that it is not a case where the workman has misappropriated any amount, that he allowed three passengers to travel in the bus and the passengers had said that they will make the payment after the journey was concluded, but before the journey was completed, the Flying Squad had inspected the bus and, therefore, according to the Labour Court, the workman could not issue the tickets to the aforesaid three passengers since the payment was to be made at the conclusion of the journey. The Labour Court came to the conclusion that considering the facts and circumstances of the case, the penalty of withholding of annual increment by the S.T. Corporation for a period of three years with future effect was on the excessive side and the Labour Court, while interfering with the said punishment, substituted the penalty of withholding of three annual increments without future effect. The said Award is challenged by the petitioner-Corporation.

4. It was argued by Mr.Sood that considering the nature of the dispute and considering the fact that the workman had misappropriated some amount, it is not a case wherein the Labour Court should have interfered with the order of the Corporation.

As against that, Ms.Sona Sagar, learned Advocate for the workman, argued that, as a matter of fact, this is not a case in which the respondent-workman had misappropriated any amount and that even as per the evidence of one of the passengers, he has clearly stated that he has not paid any amount to the concerned workman and that part is also discussed in the Award (at page 18 of the compilation). She further submitted that, as a matter of fact, it was a case of no evidence so far as

the workman is concerned and that what was admitted by the concerned workman was that he has not challenged the legality of the enquiry proceedings, but, according to her, the finding of the Enquiry Officer can always be challenged in such eventuality before the Labour Court. She also submitted that the concerned employee has retired since long and under these circumstances, this Court may not interfere with the order of the Labour Court which is in the nature of a discretionary order and the Labour Court is entitled to invoke the jurisdiction under Section 11-A of the I.D. Act.

5. After hearing both the sides, I am of the opinion that since the charge against the concerned employee was proved in the enquiry, the Labour Court has taken a very lenient view by substantially reducing the penalty. However, considering the fact that the employee has retired from service, interest of justice will be met if order of the Labour Court is modified and the workman is subjected to the penalty of withholding of one increment with future effect. It is also required to be noted that the S.T. Corporation itself has not removed the said workman from service and now, since the employee has retired since long, some modification in the order of the Labour Court may meet with the ends of justice. Under the circumstances, the following order is passed :-

The concerned employee will be subjected to the penalty of withholding of one annual increment with future effect. The order of the Labour Court is accordingly modified to the aforesaid extent. Since the concerned employee has retired from the service, the S.T. Corporation is directed to calculate his retiremental dues by taking into account the aforesaid modified penalty and whatever retiremental dues are required to be paid to the workman may be paid by 31st October, 2001.

The petition is accordingly partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

5th September, 2001 (P.B. Majmudar, J.)

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(apj)